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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,800	09/29/2003	Adam D. Straus	266-2	2981
24336	7590	09/26/2006		
KEUSEY, TUTUNJIAN & BITETTO, P.C. 20 CROSSWAYS PARK NORTH SUITE 210 WOODBURY, NY 11797			EXAMINER ALEXANDER, REGINALD	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/673,800

Applicant(s)

STRAUS ET AL.

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 29 is/are allowed.
6) ☒ Claim(s) 1-6, 8-14, 16-18, 20 and 22-28 is/are rejected.
7) ☒ Claim(s) 7, 15, 19 and 21 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11, 25 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 11 and 25, there is no clear antecedent basis for the "illumination feature". In claim 28 there is recited a "ratchet mechanism" which holds the hub, but there is no recitation that the hub is movable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 9-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Chiu.

There is disclosed in Schroeder a pinwheel, comprising: a first axis 20, which supports a hub 12, a plurality of protrusions (blades) 13, 14, 15 connected to the hub and radially extending therefrom, and candy items 40 attached to the plurality of protrusions; wherein the hub is formed into a figure (circular figure), the first axis is

provided by an axel connected to a platform (handle) and the hub and blades could spin if fitted loosely enough together.

Chiu discloses a pinwheel having a hub supported by a first axis, a handle transverse to the first axis to permit the hub to rotate about the first axis, and the use of illuminating members on blades connected to the hub of the pinwheel.

It would have been obvious to one skilled in the art to substitute the hub and handle arrangement of Schroeder with that taught in Chiu, in order to allow the pinwheel to freely rotate.

It would have been obvious to one skilled in the art to provide the pinwheel of Schroeder with the illuminating members taught in Chiu, in order to create an aesthetically pleasing view when the pinwheel is used.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Chiu as applied to claims above, and further in view of Exline et al.

Exline discloses that it is known in the art to provide a detachable advertising item (tag or marking) on the hub of a pinwheel.

It would have been obvious to one skilled in the art to provide the hub of Schroeder with the advertising item taught in Exline, in order to promote to the user.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Chiu as applied to claims above, and further in view of Hoppe.

Hoppe discloses a pinwheel which uses air and a motor arrangement to rotate the hub and spokes of the pinwheel.

It would have been obvious to one skilled in the art to provide the device of Schroeder, as modified by Chiu, with the motor arrangement taught in Hoppe, in order to allow a mechanical rotation of the hub.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Chiu as applied to claims above, and further in view of Lee.

Lee discloses that it is known to have a device which makes sounds when a pinwheel is spinning.

It would have been obvious to one skilled in the art to provide the pinwheel of Schroeder, as modified by Chiu, with the sound producing device taught in Lee, in order to provide an audio form of entertainment to the user.

Claims 16, 17, 22, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Hoppe.

Hoppe discloses a pinwheel which uses air and a motor arrangement to rotate the hub and spokes of the pinwheel.

It would have been obvious to one skilled in the art to provide the device of Schroeder with the motor arrangement taught in Hoppe, in order to allow a mechanical or air rotation of the hub.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Hoppe as applied to claims above, and further in view of Exline et al.

It would have been obvious to one skilled in the art to provide the hub of Schroeder, as modified by Hoppe, with the advertising item taught in Exline, for the reasons disclosed in the rejection above.

Claims 20, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Hoppe as applied to claims above, and further in view of Chiu.

Chiu discloses the use of illuminating members on the blades of a pinwheel.

It would have been obvious to one skilled in the art to provide the pinwheel of Schroeder, as modified by Hoppe, with the illuminating members taught in Chiu, in order to create an aesthetically pleasing view when the pinwheel is used.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Hoppe as applied to claims above, and further in view of Lee.

Lee discloses that it is known to have a device which makes sounds when a pinwheel is spinning.

It would have been obvious to one skilled in the art to provide the pinwheel of Schroeder, as modified by Hoppe, with the sound producing device taught in Lee, in order to provide an audio form of entertainment to the user.

Allowable Subject Matter

Claims 7, 15, 19 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 29 is allowed.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Coleman are cited for their teaching of the placement of a candy item on any type of moving holder structure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla
18 September 2006


Reginald L. Alexander
Primary Examiner
Art Unit 1761